IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

(Attorney Docket No. 06-278)

In the Application of:	)
	)
John Hillel Moshal	) Art Unit: 3714
	)
Serial No.: 10/576,743	)
	) Examiner: Lim, Seng Heng
Filed: January 9, 2007	)
	)
For: Redundant Gaming System	) Confirmation No. 8207

REPLY BRIEF

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I.   Introduction

The Examiner's Answer, mailed July 31, 2009, failed to rebut the points of clear error identified in Applicant's Appeal Brief. This Reply Brief addresses the specific arguments made in the Examiner's Answer.

II.   Argument

A.   The Examiner Erred in Rejecting Claims 26-32 and 34-39 as Being Unpatentable Over Coile in View of Holch

In Section VII.A of the Appeal Brief, Applicant argued the following: (1) the Examiner used an improper "mix-and-match" approach by relying on some features of the Figure 1 system in Coile and on other features of the completely contrary Figure 2 system; and (2) Coile does not disclose the claimed "watchdog facility." *See* Appeal Brief, pp. 3-11.

With regard to point (1), the Examiner now agrees that it was erroneous to rely on both Figure 1 and 2. *See* Examiner's Answer, p. 6. Recognizing that the Examiner's "mix-and-match" approach was improper, the Examiner has made a "corrected rejection" that only refers to Figure 1 of Coile. *See* Examiner's Answer, pp. 3-4 and 6.

With regard to point (2), however, the Examiner maintains that Coile teaches the claimed "watchdog facility." Specifically, the Examiner argues that in the Figure 1 system of Coile, an application on client 100 sends out data packets to the primary server at regular intervals and whenever "the client does not receive a response from the primary server within a time frame, it senses that a failure has occurred and a switch to the backup server is necessary." *See* Examiner's Answer, pp. 4, 6, and 7. According to the Examiner, this function is taught in col. 2, lines 50-59 of Coile.

The Examiner is clearly wrong. Coile discloses that "[t]he switch from primary network device 110 to backup network device 120 requires the client to sense that a failure has occurred"

(*see* col. 2, lines 50-52) and that "[w]hen primary network device 110 fails, client 100 must detect that failure and determine that a switch to the backup network device is necessary" (*see* col. 2, lines 56-58), but Coile does not disclose *how* client 100 senses or detects failure of primary network device 110.

More particularly, Coile does not disclose that client 100 functions in the same way as the claimed "watchdog facility" by: (i) transmitting a data packet to the primary server at *regular intervals* and (ii) changing the status of the primary server from active to failed whenever an expected response is not received from the primary server within a *predetermined time interval*. In fact, Coile discloses neither function (i) nor function (ii).

With regard to function (i), Coile does not disclose that client 100 transmits a data packet to primary network device 110 at *regular intervals*. The Examiner has tried to infer such a teaching in Coile by arguing that "Coile teach a watchdog facility (i.e. an application) on the client's device (100) to send out data packets to the primary server at regular intervals because the client is constantly communicating with the server." *See* Examiner's Answer, p. 6.

But Coile does not disclose that client 100 is constantly communicating with the server. Coile discloses that "client 100 is connected to a primary network device 110 that provides some sort of network service" (*see* col. 2, lines 30-31), but Coile does not disclose that the network service would necessarily involve client 100 transmitting a data packet to primary network device 110 at *regular intervals*. To the contrary, client 100 might transmit data to primary network device 110 only in response to user input, or in response to some other trigger that does not occur at regular intervals. Thus, the Examiner's allegation that client 100 transmits data to primary network device 110 at regular intervals is wholly without justification.

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With regard to function (ii), Coile does not disclose a *predetermined time interval* for determining whether an expected response is received. The Examiner has argued that the client "waits for a response within a predetermined period of time for determining whether to change the status of the primary gaming server from active to failed." *See* Examiner's Answer, p. 7. But, in fact, Coile does not teach that client 100 waits for any kind of response, within a predetermined period of time or otherwise, for determining that primary network device 110 has failed. As noted above, Coile discloses that client 100 senses or detects failure of primary network device 110, but Coile does not disclose *how* client 100 does so. In the absence of such details, the Examiner's argument that client 100 waits for a response within a predetermined period of time to determine whether a failure has occurred is wholly without justification.

For example, instead of using the *two-way* communication approach of the claimed "watchdog facility," the Figure 1 system could use a *one-way* communication approach, such as having primary network device 110 periodically send a confirmation message to confirm that it has not failed. Indeed, the Figure 2 system in Coile uses a one-way communication approach, as discussed on pages 10-11 of Applicant's Appeal Brief. Because Coile does not disclose *how* client 100 senses or detects failure of primary network device 110, there is no justification for the Examiner's argument that Coile's Figure 1 system uses a two-way communication approach like the claimed "watchdog facility," rather than a one-way communication approach like Coile's Figure 2 system.

Accordingly, Coile does not teach a "watchdog facility" as recited in claims 26 and 34. Holch does not make up for this deficiency in Coile. Therefore, the Examiner's rejection of claims 26-32 and 34-39 is clearly erroneous and should be reversed.

B. **The Examiner Erred in Rejecting Claims 33 and 40 Under 35 U.S.C. § 103(a) as Being Unpatentable Over Coile in View of Holch, and Further in View of Duncombe**

Claim 33 is dependent on claim 26, and claim 40 is dependent on claim 34. Applicant submits that the rejections of claims 33 and 40 are erroneous for at least the same reasons as set forth above for claims 26-32 and 34-39. Moreover, if an independent claim is nonobvious, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).
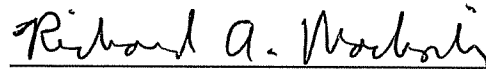
C. **Conclusion**

Applicant has demonstrated that the rejections of claims 26-40 are erroneous as a matter of law. Applicant therefore requests reversal of the rejections and allowance of all pending claims in this application.

Respectfully submitted,

Date: September 24, 2009   By: *Richard A. Machonkin*

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